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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Review of the Commission's)
Rules and Policies)
Affecting the Conversion)
To Digital Television)
)

MM Docket No. 00-39

To: The Commission

COX BROADCASTING, INC.
COMMENTS ON PETITIONS FOR RECONSIDERATION

Cox Broadcasting, Inc. ("Cox"), by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby files these comments in support of several petitions for reconsideration of the Commission's *Report and Order* in the above captioned proceeding, in which the Commission adopts several new rules intended to facilitate the digital transition.¹ Through subsidiaries, Cox owns a number of commercial television stations licensed to various sized communities throughout the United States. Cox already provides new DTV service in several major markets² and supports the Commission's efforts to transition the nation's television system from analog to digital technology. After reviewing the petitions for reconsideration, Cox believes that the

¹ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 00-39 (rel. Jan. 19, 2001); 66 Fed. Reg. 9973 (Feb. 13, 2001) ("*Report and Order*"). This response is timely filed within fifteen days after the date of publication of the petitions for reconsideration in the *Federal Register*. See 47 C.F.R. §§ 1.429(f), 1.4(b) (2000).

² The following television stations owned by Cox currently provide DTV service: WSB-DT, Atlanta, GA; WSOC-DT, Charlotte, NC; WPXI-DT, Pittsburgh, PA; KTVU-DT, Oakland, CA; KICU-DT, San Jose, CA; and KIRO-DT, Seattle, WA.

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Commission needlessly is implementing burdensome regulations at the nascency of digital television. Accordingly, Cox wishes to express its support for reconsideration of several premature DTV regulations.

I. THE COMMISSION SHOULD CONTINUE TO PROTECT STATIONS' UNREPLICATED SERVICE AREAS AFTER DECEMBER 31, 2004.

The Commission announced in the *Report and Order* that after December 31, 2004, it would no longer protect DTV stations' unreplicated service areas from interference.³ Cordillera Communications, Inc. ("Cordillera") and others asked that the Commission eliminate this provision, arguing *inter alia* that the rule was premature and would obstruct long-term DTV implementation and build-out.⁴ Cox agrees with these petitioners that the replication incentive is unwarranted at this time.

The Commission adopted the replication incentive "to assure that viewers do not lose service" and "to speed the [DTV] transition."⁵ The various petitions persuasively demonstrate that the replication incentive would not advance these goals substantially. Indeed, broadcasters already have sufficient reason to meet these Commission objectives. As the FCC states, "most DTV licensees will replicate their NTSC service areas, and we have decided that an express requirement is unnecessary in this regard. DTV licensees have incentives to replicate to serve their established viewers."⁶ The replication incentive adopted by the Commission actually could

³ *Report and Order* at ¶ 22.

⁴ Cordillera Petition at 6-9; Paxson Communications Corporation ("Paxson") Petition at 6-9; MSTV/NAB/ALTV Petition at 4-8; Joint Broadcasters' Petition at 3-5; Red River Broadcast Co., LLC, Red Rock Radio Corp. and KQDS Acquisition Corp. ("Red River") Petition at 5, 6-7; Dispatch Broadcast Group ("Dispatch") Petition at 3-4; Block Communications, Inc. ("Block") Petition at 6-8.

⁵ *Report and Order* at ¶ 22.

⁶ *Id.* at ¶ 23.

complicate and delay the digital transition, undermining the Commission's asserted goals by eliminating broadcasters' flexibility to roll-out DTV service in a measured and sensible fashion.⁷ Furthermore, DTV stations that cannot replicate by 2005 could be stunted in the early stages of development by encroaching competitors – including newly authorized Class A stations capable of “dropping-in” service.⁸ Some viewers accordingly would lose relied-upon broadcast service, contrary to the Commission's intended purposes.

Cox agrees with MSTV that the Commission should encourage broadcasters to launch viable DTV service as soon as possible by making it reasonable for stations to “start small.”⁹ Imposing the replication incentive, on the other hand, will require many broadcasters to “start big” without sufficient time to develop and test DTV implementation plans. It is premature for the Commission to impose a new regulatory burden while the DTV transition still is in its early stages and there is no evidence of a market failure or a causal delay.¹⁰ The Commission would better foster a successful DTV transition by continuing to protect DTV stations' unreplicated service areas and reconsider the matter, if at all, in its next periodic review.

II. AN INCREASED CITY GRADE COVERAGE REQUIREMENT IS PREMATURE.

The Commission's rule adopting a stronger principal community coverage requirement is largely the result of concerns about the reliability of DTV service.¹¹ Paxson and others,

⁷ See MSTV/NAB/ALTV Petition at 5-6.

⁸ See Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355, ¶¶ 67-75 (2000).

⁹ MSTV/NAB/ALTV Petition at 7.

¹⁰ See Cordillera Petition at 8.

¹¹ *Report and Order* at ¶ 27.

however, asked the Commission to reconsider this requirement,¹² arguing that the rule addresses only speculative concerns while imposing very real burdens.¹³ MSTV asks that the Commission grant waivers in cases where circumstances make it impossible for a DTV station to meet the new requirement.¹⁴

Cox agrees with these concerns and urges the Commission to refrain from imposing the increased coverage requirement at this time. This “one-size-fits-all” approach is unreasonable when broadcasters, much less the Commission, have little practical DTV experience upon which to base coverage determinations. The request of MSTV and others that the Commission adopt a liberal waiver policy simply reflects that this issue is not ripe. Facing a variety of terrain and geography issues, broadcasters are in the best position to ensure that communities of license are adequately served. No increased coverage requirement is necessary unless and until practical experience demands it.

III. BROADCASTERS NEED ADDITIONAL TIME TO SELECT A PERMANENT DTV CHANNEL.

Cox agrees with those broadcasters asking the Commission to reconsider requiring commercial broadcasters to elect their post-transition channel by December 31, 2003.¹⁵ Cox understands that forcing broadcasters to select their permanent DTV channels by a date certain will benefit new entrants, but the election date is far too soon for broadcasters to determine which paired channel would offer superior prospects for digital service. The Commission is

¹² Paxson Petition at 5-6, MSTV/NAB/ALTV Petition at 8-10, Joint Broadcasters Petition at 5-6.

¹³ Paxson Petition at 5.

¹⁴ MSTV/NAB/ALTV Petition at 10.

¹⁵ *Report and Order* at ¶ 14. See Cordillera Petition at 10-11; Joint Broadcasters Petition at 6-8; MSTV/NAB/ALTV Petition at 14-15; Dispatch Petition at 2-4; Block Petition at 8-9.

bound by statute to ensure the "efficient and intensive use" of auctionable spectrum,¹⁶ and it would be contrary to that directive to require broadcasters to elect their permanent channel without sufficient experience with DTV technology and operations. The DTV transition has not suitably progressed and will not have done so by December 31, 2003, to allow for informed decisions. Accordingly, the Commission should postpone the DTV channel selection deadline.

CONCLUSION

Cox supports those petitions for reconsideration which ask the Commission to defer imposing replication, community coverage, and channel election requirements on DTV stations. By postponing action, the Commission can reevaluate the rules in its next periodic review with a more full and complete record and without unnecessarily burdening DTV stations in the interim period. Moreover, now that broadcasters are on notice about the Commission's concerns in this area and with more experience with DTV, they will be better able to comment on proposed regulations in the next biennial review. Accordingly, the Commission should reconsider the replication, community coverage and channel election rules set forth in the *Report and Order*.

Respectfully submitted,

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¹⁶ 47 U.S.C. § 309(j)(3)(D).

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 12th day of April, 2001, the foregoing "Comments on Petitions for Reconsideration" was served via first class mail (except where hand delivery is noted by an asterisk) to the following:

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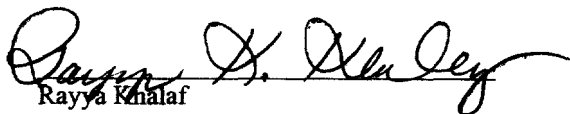
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